

## Corporate Law Newsletter

### The Companies Act 2006 – What is coming up

The final part of the Companies Act 2006 comes into force on 1st October 2009. Many fundamental changes will be introduced. They include: -

#### 1. Changes to the constitutional documents of the company

The process for forming a company will change, as will the significance of the company's constitutional documents.

At the moment, a company's memorandum of association contains the "objects" of the company, being the purposes for which it has been set up. These days, the objects are often drafted as widely as possible and are either a short sweeping commercial set covering general running of commercial company or run to pages and pages to specify every part of the business that the company may operate. However, if the company is incorporated on or after 1st October 2009, this document will change substantially. It will be a very short one page

document effectively stating that the company has been incorporated at the date of incorporation by the subscribers and companies wish to form a company under the act. Simple as that!

Companies formed from 1st October will be deemed to have unrestricted objects unless they choose to include restrictions in their articles.

Moving to the Articles of Association, these will be changing too to reflect the many changes that have been made to company law by the act. As from 1st October 2009 there will be a completely new set of model articles, being the default articles of association provided by regulations.

Unlike the current default articles (which are called Table A) the new model articles contain virtually no repetition of the act. There is no provision for example for the quorum for holding a shareholders meeting, which would be contained in the act itself and would therefore

necessitate a director who was unsure looking up the 1,300 sections! The new model articles are however very helpful in particular for owner managed businesses, which are the majority of businesses. Some of the over complex (and generally inapplicable) provisions regarding liens over shares, part payment of shares etc have all been omitted.

#### 2. Changing of Company Name

From October 1st 2009, companies will be able to include in their Articles of Association alternative mechanisms for changing their name. For example, they could just give the directors the powers to change the company's name.

#### 3. Share Capital

One of the most far reaching amendments is that a company will no longer have to have an authorised share capital. There will simply be a statement of the number of shares in issue each time

there is a change.

Spearing Waite are doing a third of their series of seminars on the provisions of the Companies Act in October. Please contact Kate Blank or Martin Smith concerning this. Invitations to the seminar will be issued shortly. You are very much advised to attend. Spearing Waite are also keen to hear from anybody who may wish to review their Articles as this is a vital time for such a review to take place. For example you should consider: -

- Whether to remove from the Articles any restrictions which will no longer apply from that date.
- Whether to take advantage of other deregulatory provisions within the Act.
- Whether to consider including an alternative mechanism for change of Company name.

### Commercial Agents – Further Developments

With difficult trading conditions at the moment, companies may be looking to the appointment of agents to expand their potential markets.

There have been two more decisions in recent months.

The first, Segal (trading as Bunz UK) v Hotelier Bunz GMBH [2008] considered Regulation 2(1) which deals

with the definition of a commercial agent.

The court concluded that it was clear that: -

1. Mr Segal was buying from Hotelier Bunz and then selling under a separate contract at UK Jewellery Retailers: Mr Segal had no authority from Hotelier Bunz to negotiate or contract on its behalf.

2. There was no direction on price from Hotelier Bunz.

3. Mr Segal pursued unpaid invoices in the name of Bunz UK.

4. The trading accounts and tax returns of Mr Segal reflected the contractual structure that was in place between himself and Hotelier Bunz and were not consistent with that of a

commercial agency.

The Court therefore decided that the evidence clearly indicated that Mr Segal was a distributor not an agent and did not fall under the regulation 2(1) definition.

The Second case is *Nigel Friar Joinery Services Limited v Ian Firth Hardware Limited [2008]* which considered firstly what

activities came within the meaning of "negotiate" on behalf of. It was concluded that an agent whose role (like that of Mr Friar) is to get the client interested in the product, suggest possible prices subject to confirmation by the principal, and to encourage the customer to

place an order at those prices: does come within the ordinary meaning of "negotiate".

After deciding he was a commercial agent, the court looked at Mr Friar's claim for compensation under Regulation 17. The court noted that the mechanism for value

in compensation due to an agent for termination of its agency is set out in the case of *Lonsdale v Howard and Halam Limited [2007]*. The value of the compensation claim should be based on the value of the goodwill in the agency – what the value of the agency would be at

termination if it were to be sold in the open market.

In this case because the court did not think that there would be any hypothetical buyer, the court would not reject the claim for compensation under Regulation 17.

## Community Interest Companies (CICs)

Most ordinary companies, even those that provide benefits to the community, are set up and run mainly for the benefit of their own members and employees. Community Interest Companies are different. Their primary purpose is to provide benefits to the community, rather than to the individuals who own, run or work in them.

CICs will typically appeal to

entrepreneurs who want to provide a benefit to the community in a form other than a charity. CICs are limited companies, with special additional features. The aims of a CIC are achieved by complying with the "community interest test" and "asset lock". These features ensure that the CIC is established for community purposes and the assets and profits are dedicated to these purposes. Registration of a company as a

CIC has to be approved by the Regulator who also has a continuing monitoring and enforcement role.

A company satisfies the community interest test if a reasonable person might consider that its activities (or proposed activities) are carried on for the benefit of the community. However, a CIC cannot be set up with a view to take part in activities which include:

- political campaigning and activities intended to support political campaigning; or
- activities which a reasonable person might consider to benefit only the members of a particular body or the employees of a particular employer.

## Formation of a CIC

To form a new company as a CIC you need to deliver the following documents to the appropriate Registrar of Companies for England & Wales, Scotland or Northern Ireland together with the appropriate fee:

- Memorandum of association and articles of association that comply

with the Regulations (NB: a CIC must register Articles specifically designed for its purposes and cannot rely on Table A of the Companies Act).

- Form CIC 36, which includes a community interest statement, and a declaration that the company will not be an excluded company i.e.

politically motivated.

- Form 10 gives details of first directors and company secretary and the intended address of the registered office.
- Form 12, which is a statutory declaration of compliance with the legal requirements for formation

of a company.

- Cheque for £35 payable to Companies House.

For further advice and information on setting up a CIC, please contact a member of the Corporate and Business Services team.

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